



**Notice – Request for Qualifications  
For  
Engineering Services  
For  
The Totem Lake Stormwater Retrofit Conceptual Design  
Job #36-13-PW  
For  
The City of Kirkland, Washington  
July 26, 2013**

The City of Kirkland, Washington invites Engineers (hereinafter referred to as the "Offeror") to submit Qualifications to provide engineering analysis, design and planning services for the Totem Lake Stormwater Retrofit Conceptual Design project.

**Dates/Times:**

All Statements of Qualifications must be received no later than August 26th, 2013 at 11:00 AM Pacific Time.

Qualifications titled **"RFQ Totem Lake Stormwater Retrofit Conceptual Design"** may be submitted as an email attachment in PDF or MS Word format to: [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov). Note that faxed submittals or submittals provided as Zip files will not be accepted.

If not submitted as an email attachment, two (2) bound double-sided originals and 1 CD in PDF or MS Word format of the Statement of Qualifications must be mailed or delivered to:

City of Kirkland  
Attention Purchasing Agent, Job #36-13-PW  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

The City is committed to reducing costs and facilitating quicker communication by using electronic means to convey information. Those interested in submitting a Statement of Qualifications are encouraged to provide contact information to Barry Scott, Purchasing Agent, at [bscott@kirklandwa.gov](mailto:bscott@kirklandwa.gov). Providing contact information will allow the City to provide notification if an addendum to the RFQ is issued or the RFQ is cancelled. Those who choose not to provide contact information are solely responsible for checking the City's website for any issued addenda or a notice of cancellation.

The City of Kirkland (hereinafter referred to as the "City" or the "Owner") reserves the right to reject any or all submittals, or to withhold the selection of firms for any reason it may determine, or to waive or decline irregularities in any submittal.

Interpretation or corrections of the RFQ documents will be made only by written addendum, which will be mailed or delivered via e-mail to each Offeror on record. The City is not responsible for any other explanations or interpretations of the RFQ and/or RFQ documents.

**Contact:**

For additional information about this RFQ or any other aspect of the selection process or the project in general, please contact via e-mail:

Name: Ms. Jenny Gaus, PE CSM

E-Mail: [jgaus@kirklandwa.gov](mailto:jgaus@kirklandwa.gov)

Absolutely no communication shall occur regarding this RFQ, including requests for information, or speculation between the Offerors or any of their individual members and any City elected official or employee other than those named above. Failure to comply with this provision may result in Offeror's proposal being removed from consideration.

Offerors shall submit written questions no later than August 15th, 2013 at 2:00 PM.

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any information or material submitted in response to the RFQ, shall be borne solely by the Offeror.

**1 Overview:**

**A. Size and Reach of Project:**

The City has been awarded a grant of \$247,100 from the National Estuary Program (NEP) Watershed Protection and Restoration Program as administered by the Washington State Department of Ecology. Total project cost is estimated at \$270,960, with engineering consulting costs estimated at \$227,146. The purpose of the work is to develop an overall plan to retrofit the Totem Lake subbasin of the Juanita Creek Watershed to meet Ecology's 2012 flow control and water quality standards. In addition, the city has committed to providing Ecology with 3 "pre-design" reports for specific facilities that are recommended in the overall plan. Please see the attached Grant Agreement G1400024 for further details. The full grant application is available upon request and requirements of the grant are provided as Attachment B. The stormwater retrofit plan needs to consider the impacts that proposed facilities may have on flood severity and frequency in the Totem Lake area.

**B. Schedule of Deliverables:**

Project must be complete by **October 31, 2014**, *including a final report*. The attached Grant Agreement G1400024 contains a description of deliverables and due dates.

### **C. Project Scope:**

The attached Grant Agreement G1400024 contains the scope of work. The grant application, which contains maps and additional information, is available upon request. The scope must also include consideration of the impacts of proposed retrofit strategy on flood severity and frequency in the Totem Lake area.

## **2 Qualification Submission Requirements**

All submittals must be in accordance with the requirements set forth in this RFQ. The Statement of Qualifications shall not exceed five (5) pages double-sided (one page is equal to one side of a sheet). The front cover, the back cover, a maximum two-page cover letter, stock project examples and resumes may be in addition to the five (5)-page limit.

A minimum proposal will provide at least two examples of similar projects completed within the past 5 years, with references provided. The firm will also illustrate how it will fulfill the needed requirements, the products that will be produced and proposed schedule of analysis and conceptual design delivery. Proposal format will be at the firm's discretion, but the city encourages respondents to consider text-based proposals that minimize time and costs of preparation. Proposals will be ranked according to the criteria noted below.

## **3 Final Selection Procedures:**

After proposals have been received and reviewed by the Selection Committee, the highest ranked firms will be notified and invited to participate in a final selection phase. It is intended that this phase will include the following steps:

- A. Notification:  
E-mail notification of top ranked firms.
- B. Interview/Presentation:  
A (1 hour) Interview/presentation period will be scheduled and conducted with the Selection Committee at Kirkland City Hall. The firm will be given 30 minutes for presentation. The remaining time will be reserved by the Selection Committee for questions.

The engineering consulting team should illustrate the design and production strategy for this project and identify what attributes and unique qualifications their firm offers Kirkland. It should emphasize measures and control methods used to assure quality, schedule, and budget conformance.

- C. Final Ranking:  
After the interviews are completed the Selection Committee will rank the firms interviewed. The qualifications proposal, and interview/presentation will be weighted equally and scored as follows:

• Understanding of project scope and requirements	20 points
• Previous experience in similar projects	20 points
• Suggested project approach	25 points
• Expertise of key personnel	20 points
• Response from references/past projects	<u>15 points</u>
Total Maximum	100 points

D. Negotiation/Scope Development:

The top ranked firm will be notified in writing and will be asked to meet and submit their prospective scope of services and fee estimate.

If, after negotiation and consideration, the City is unable to reach an acceptable agreement with the top-ranked firm, they will terminate negotiations with the top ranked firm and, at their sole discretion, may: enter into negotiations with the second ranked firm; withhold the award for any reason; elect not to proceed with any of the proponents; or re-solicit new Qualifications.

E. Final Selection:

Once the City reaches an agreement that it finds acceptable with a preferred engineering consulting firm, the Selection Committee will then make a recommendation to the Public Works Director whose decision will be final.

F. Contract:

It is expected that a City of Kirkland Professional Services Contract will be executed. A sample agreement is provided as Attachment A.



## PROFESSIONAL SERVICES AGREEMENT

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The City of Kirkland, Washington, a municipal corporation (hereinafter the "City") and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter the "consultant"), agree and contract as follows:

### I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services described in Attachment \_\_\_\_\_ to this Agreement, which attachment is incorporated herein by reference.
- B. All services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely and in accordance with professional standards of conduct and performance.

### II. COMPENSATION

- A. The total compensation to be paid to Consultant for these services shall not exceed \$\_\_\_\_\_, as detailed in Attachment \_\_\_\_\_.
- B. Payment to Consultant by the City in accordance with the payment ceiling specified above shall be the total compensation for all work performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid monthly on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time as consultant modifies such work to the satisfaction of the City.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

### **III. TERMINATION OF AGREEMENT**

The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days notice to Consultant in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the City. In the event the City terminates prior to completion without cause, consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on the project prior to the date of suspension or termination, not to exceed the payment ceiling set forth above.

### **IV. OWNERSHIP OF WORK PRODUCT**

- A. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the City. Any reuse of these materials by the City for projects or purposes other than those which fall within the scope of this contract or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.

The City acknowledges the Consultant's plans and specifications as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of any reuse of such plans and specifications by any third party without the written authorization of the Consultant.

- B. Methodology, materials, software, logic, and systems developed under this contract are the property of the consultant and the City, and may be used as either the consultant or the City sees fit, including the right to revise or publish the same without limitation.

### **V. GENERAL ADMINISTRATION AND MANAGEMENT**

The \_\_\_\_\_ for the City of Kirkland shall review and approve the Consultant's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the City.

### **VI. COMPLETION DATE**

The estimated completion date for the consultant's performance of the services specified in Section I is \_\_\_\_\_.

Consultant will diligently proceed with the work contracted for, but consultant shall not be held responsible for delays occasioned by factors beyond its control which

could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the City.

## **VII. SUCCESSORS AND ASSIGNS**

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the City.

## **VIII. NONDISCRIMINATION**

Contractor shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legally available remedies.

## **IX. HOLD HARMLESS/INDEMNIFICATION**

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

## **X. LIABILITY INSURANCE COVERAGE**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

### **A. Minimum Scope of Insurance**

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability

coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

**B. Minimum Amounts of Insurance**

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit

**C. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**D. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.



**E. Verification of Coverage**

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**F. Claims-made Coverage**

Any policy of required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under the contract and filed within three (3) years following completion of the services so to be performed.

**XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE**

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

**XII. FUTURE SUPPORT**

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

**XIII. INDEPENDENT CONTRACTOR**

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him as a result of his status as an independent contractor. The Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of consultant.

**XIV. EXTENT OF AGREEMENT/MODIFICATION**

This Agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

**XV. ADDITIONAL WORK**

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this contract. Any such work or services shall be considered as additional work, supplemental to this contract. Such work may include, but shall not be limited to,

\_\_\_\_\_  
Additional work shall not proceed unless so authorized in writing by the City.

Authorized additional work will be compensated for in accordance with a written supplemental contract between the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

CONSULTANT:

CITY OF KIRKLAND:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Marilynne Beard, Assistant City Manager

Date:\_\_\_\_\_

Date:\_\_\_\_\_

## **ATTACHMENT B**

### **CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION**

The recipient, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the recipient is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

The recipient shall provide immediate written notice to ECOLOGY if at any time the recipient learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

The recipient agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

The recipient further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Pursuant to 2CFR180.330, the recipient is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

Recipient acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY upon request. Recipient must run a search in [www.epls.gov](http://www.epls.gov) and print a copy of completed searches to document proof of compliance.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### General Compliance, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

### Fair Share Objectives, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

### Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement is over \$250,000; or the total dollar amount of all of the recipient's non-Technical Assistance Grant assistance agreements from EPA in the current fiscal year is over \$250,000. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Washington Office of Minority and Women's Business Enterprises** as follows:

MBE: PURCHASED GOODS 8%; PURCHASED SERVICES 10%; PROFESSIONAL SERVICES 10%

WBE: PURCHASED GOODS 4%; PURCHASED SERVICES 4%; PROFESSIONAL SERVICES 4%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Washington Office of Minority and Women's Business Enterprises**.

### Six Good Faith Efforts, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts when procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of ECOLOGY of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

#### **MINORITY AND WOMEN'S BUSINESS PARTICIPATION**

The Recipient agrees to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

Contract awards or rejections cannot be made based on MBE or WBE participation. M/WBE participation is encouraged, however, and the recipient and all prospective bidders or persons submitting qualifications should take the following steps, when possible, in any procurement initiated after the effective date of this agreement:

- a) Include qualified minority and women's businesses on solicitation lists.
- b) Assure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
- c) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

- d) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- e) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The recipient must report to ECOLOGY at the time of submitting each invoice, on forms provided by ECOLOGY, payments made to qualified firms. Please include the following information:

- a) Name and state OMWBE certification number (if available) of any qualified firm receiving funds under the invoice, including any sub-and/or sub-subcontractors.
- b) The total dollar amount paid to qualified firms under this invoice.

## **FEDERAL PROVISIONS**

The Subgrantee and all its subcontractors shall comply with any and all applicable federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, laws, regulations and policies listed in this Agreement.

### **Cost Principles**

Sub-Recipient agrees to comply with the cost principles of the below listed federal regulations are applicable as appropriate to this award.

2 CFR 225 (A-87) for State, Local, and Indian Tribal Governments

2 CFR 220 (A-21) for Educational Institutions

2 CFR 230 (A-122) Nonprofit Organizations

FAR 31.2 for Commercial Organizations

An electronic copy of all the Circulars and applicable CFR's may be obtained via the OMB Home Web page at [http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default). Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.

### **Audit Requirements**

The Sub-Recipient shall fully comply with requirements of OMB Circular A-133, 'Audits of States, Local Governments, and Non-Profit Organizations, if applicable.

Non-federal entities receiving financial assistance of \$500,000 or more in Federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the U.S. Office of Management and Budget (OMB) Circular A- 133, Audits of

States, Local Governments, and Non-Profit Organizations (Revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal entities that spend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Circular No. A-133.

Entities required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS), Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement.

The Subgrantee has the responsibility of notifying the State Auditor's Office and requesting an audit, if required.

The Subgrantee shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or subcontractors also maintain auditable records.

The Subgrantee shall include the above audit requirements in any subcontracts.

## **Recycled Paper**

Institutions of Higher Education Hospitals and Non-Profit Organizations

In accordance with 40 CFR 30.16, Sub-Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

## ***State and Local Institutions of Higher Education and Non-Profit Organizations***

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

## **LOBBYING**

Sub-Recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. Sub-Recipient shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms

accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

### *Part 30 Recipients*

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All contracts awarded by Sub-Recipient shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, Sub-Recipient affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

### *Lobbying and Litigation*

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Sub-Recipient's chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Sub-Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

### **Trafficking in Persons**

The following prohibition statement applies to Sub-Recipient, and all sub-awardees of Sub-Recipient. Sub-Recipient must include this statement in all sub-awards made to any private entity under this Agreement.

"YOU AS THE SUB-RECIPIENT, YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES' EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD."

### **FY2011 ACORN Funding Restriction**

No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.